

### REMARKS

Claims 1-26 are pending in the case. All claims stand rejected. Reconsideration is respectfully requested.

Claims 1-18, 25 and 26 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hericourt (USP 6,792,461 B1). Furthermore, claims 19-24 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hericourt in view of O'Neil et al. (USP 6,128,279). Applicant respectfully traverses the rejection.

Hericourt and O'Neil were the same references used to reject claims 1-26 in the June 12, 2006, office action. The Examiner indicates in the present office action that the arguments against the Hericourt and O'Neil references were moot in view of the new grounds of rejection. In the present office action, the Examiner merely applies Hericourt to the instant claims in a different way than was done previously. The new grounds of rejection are just as improper as the previous grounds of rejection for at least the following legal reasons.

First, as stated in MPEP §2141.02, “[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether **the claimed invention as a whole** would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed Cir. 1983). Hericourt by nature is not concerned with a “management system” and is not configured to process management transactions. The Examiner attempts to take different elements of Hericourt to apply to the instant claims without viewing the claimed invention as a whole. When the claimed invention is viewed as a whole, it would be obvious to the Examiner that the teaching in Hericourt has no relevancy at all.

Second, “[i]t is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious.” In re Fritch, 972 F.2d 1260, 1266 (Fed. Cir. 1992). It is well established legal principle that **hindsight reconstruction of the claimed invention is not permissible**. The Examiner may not use the claimed invention as a template and merely pick and choose elements from Hericourt to fit the instant claims to the extent that the elements can be applied.

Then, to the extent that the elements in Hericourt do not fit the instant claims, the Examiner then resorted to the assertion that the missing elements/connections are “well-known.” In making the instant rejection, the Examiner is engaging in impermissible hindsight reconstruction of Applicant’s claims. There is in fact nothing in Hericourt that indicates that Hericourt’s system can be modified by what the Examiner indicates as “well-known” in the art.

The deficiency of the §103(a) as applied to claims 1-26 will be discussed in detail below.

#### Hericourt

As detailed in Applicant’s August 22, 2006, response, Hericourt is directed to a method and system for managing data traffic between an intranet and the Internet. The Abstract of Hericourt recites:

The Intranet composed of client computers connected to a router system which bridges the connection to a plurality of proxy servers. **The proxy servers act as a gateway to the Internet and operate on a designated application level protocol. The router system redirecting packets** based on application level protocols to the proxy servers while checking the destination proxy server with an authorized list. The router system blocking or transmitting based on the application level protocol and the authorized server. (Emphasis added.)

Hericourt illustrates in Figure 4 “an end user workstation with a plurality of proxy servers.” Hericourt describes:

FIG. 4 shows **an end user workstation 401** connected to an Intranet 402. **The Proxy Servers 403 that protect the Intranet** attach both the (private) Intranet 402 and the (public) Internet 404. **The destination Web System 405** also connects the Internet (the Web System is for instance a Web Server, a FTP Server, or any system **attached to the Internet that can be accessed from the Intranet**).

...

The end user workstation 401 comprises a software program called Web Browser 406. The Web Browser is configured

to access Web Systems located on the Internet, through a Proxy Server 403.

**When the Web Browser wants to retrieve HTTP data (for instance a Web Page) from a destination Web System 405, the end user workstation sends 408 an IP Datagram comprising a request to retrieve said HTTP data to a destination Proxy Server on the Intranet network. IP Routers within the Intranet receive the IP Datagram and route it 409 towards its destination. Each IP Router determines the next hop within the Intranet, using the Destination IP Address field in the IP Datagram Header. (Hericourt, col. 10, line 55, to col. 11, line 13, emphasis added.)**

Hericourt went on to explain that “the present invention relates to a system and method for policing the Web Traffic within the Intranet.” (Hericourt, col. 11, lines 38-41.)

Hericourt concerns only with managing data traffic between an intranet and the Internet. Hericourt does not teach or suggest a management system for supporting the management of a data network. In Hericourt, the proxy servers, acting as the gateway between the intranet and the internet, do not operate as the processor element for a management system as the proxy servers do not perform network management functions but rather merely directs and controls internet data traffic.

Because Hericourt by nature is directed to an entirely different application than the claimed invention and by nature has an entirely different network structure, no matter how the Examiner applies Hericourt to the instant claims, Hericourt is still not capable of meeting all the elements of the claimed invention.

#### Claim 1

Claim 1, as filed, recites:

1. A management system coupled to a **first and a second network element connected to a data communication network and being managed by a network manager** also connected to the data communication network, the management system comprising:  
a management network coupled to the first and second network elements, the management network supporting a standardized network interface; and  
a **processor element** coupled to the management network and communicating with the first and second network elements through the management network, the processor element being capable of processing management transactions,

wherein a **first management transaction** is transmitted to the first network element and a **second management transaction** is transmitted to the second network element **from the network manager through the data communication network, the first and second management transactions are transmitted through the management network to the processor element, and the processor element processes the first and second management transactions on behalf of the first and the second network elements respectively.** (Emphasis added.)

Claim 1 is patentable over Hericourt at least for the following reasons.

In the present Office Action, the Examiner applies Hericourt to the elements of claim 1 as follows:

a management system – a combination of proxy servers 403 and intranet 402;  
Internet network 404 – a data communication network;  
Web Server 405 – a network manager;  
intranet 402 – a management network;  
IP router 406 – first network element;  
proxy server 403 – a processor element; and  
web page request – management transactions.

In order to make Hericourt meet the elements of claim 1, the Examiner has to gloss over several claim limitations of claim 1. Importantly, the IP router 406 of Hericourt, used to satisfy the “first network element” of claim 1, is NOT connected to the data communication network (the Internet 404) as is required by claim 1. The Examiner recognized this deficiency of Hericourt (see page 3 of the Office Action) and attempts to compensate for it by simply stating that “it is well-known in the art that Internet 404 is a public data network wherein data is routed through routers in the network. Therefore, it should have been obvious to transmit different requests (transactions) via different network elements such as routers to a network manager for a return of web pages.” *Id.*

However, the Examiner’s statement of what is “well-known” in the art is *directly contradicted by Hericourt*, the very reference the Examiner is using to reject the claim. In Hericourt, the patentee specifically provides **an Intranet composed of client computers connected to a router system which bridges the connection to a plurality of proxy**

servers (see abstract of Hericourt). The proxy servers act as a gateway to the Internet. In Hericourt's system, the IP router 406 is intentionally NOT connected to the Internet 404 but rather a plurality of proxy server 403 are used as gateways to the Internet 404. IP router 406 cannot meet the limitation of "first network element" of claim 1 because IP router 406 is intentionally and purposely not connected to the Internet but rather is isolated from the Internet.

IP router 406 is connected to the Internet through proxy server 403 which the Examiner takes as part of the management network. Claim 1 requires that the first network element be connected to the data communication network and receives management transaction through the data communication network. In Examiner's application of Hericourt to claim 1, the first network element would *receive the management transaction from the management network*. **Hericourt** as thus construe does not teach or suggest the limitations of claim 1 but rather *teaches away* from claim 1.

The following details the claim elements of claim 1 not met by Hericourt under the new reading of Hericourt by the Examiner.

First, claim 1 recites first and second network elements being connected to a data communication network and being managed by a network manager. As discussed above, the first network element (IP router 406) of Hericourt is not connected to the data communication network (Internet 404). Also, a network manager is a computing device "designated...for performing management functions to ensure that the data network is operating at the desired performance level" (Applicant's specification, paragraph [0004]). A web system 405 as described in Hericourt does not meet the requirement of a network manager according to the claimed invention as the web system 405 in Hericourt does not perform any network management functions, but rather merely supplies data, such as a web page, to the workstation.

Second, the configuration of the elements in Hericourt does not meet the claim language of claim 1. In Hericourt, the IP router 406 (the network element) is NOT connected to the Internet 404 (the data communication network). Rather, the IP router 406 (the network element) is part of the intranet 402 (the management network) and is connected to the Internet

404 only through a proxy server 403 which is the “processor element” of claim 1. Thus, the recitation of the preamble of claim 1 is not met.

Moreover, the limitation of claim 1 that “a first management transaction is transmitted to the first network element...from the network manager through the data communication network” is not met because the network element (IP router 406) of Hericourt is not even connected to the data communication network (internet 404).

Finally, the limitation of claim 1 that “the first and second management transactions are transmitted through the management network to the processor element” is not met. In the configuration of Hericourt, any communication is passed through the data communication network (internet 404) and directly to the processor elements (proxy server 403) before even reaching the management network (intranet 402).

Therefore, the configuration of Hericourt as contended by the Examiner does not meet the claim limitations of claim 1.

Third, Hericourt concerns only with managing data traffic between an intranet and the Internet. Hericourt does not teach or describe “a processor element...capable of processing management transactions” or first and second “management transactions” being transmitted from the network manager to the network elements. “Management transactions” are not merely data traffic between two networks but rather, are specific network management communications. Management transactions are described in Applicant’s specification, paragraph [0024] as “management requests issued by the network manager intended for one or more of the hardware network elements for instructing the hardware network elements to perform certain management specific functions, such as data collection, hardware reconfiguration or transmitting notifications.” Hericourt describes transmission of “web pages” which are not management transactions within the meaning of claim 1.

It is imperative to note that applicant may be his or her own lexicographer as long as any special meaning assigned to a term is sufficiently clear in the specification. See, e.g., MPEP §2111.01. Since Applicant fully describes the meaning of the terms such as “network elements”, “network manager” and “management transactions” in Applicant’s specification and these claim terms are given specific meanings, the claim limitations of claim 1 cannot be met by generic network elements and generic network configurations, such as that disclosed in Hericourt. Any prior art cited against the claimed invention of claim 1 must involve a

system for supporting the *management* of a data network, not just merely managing the data traffic of the data network.

In summary, the Examiner has not established a prima facie case of obviousness of claim 1 because not all claim limitations of claim 1 are taught or suggested by the cited reference and also because the cited reference Hericourt actually teaches away from the present invention. Claim 1 is therefore patentable over the cited reference.

#### Claims 2-14

Claims 2-14, dependent upon claim 1, are patentable over the cited reference at least for the same reasons claim 1 is patentable.

#### Claim 15

Claim 15 is patentable over the cited reference at least by reciting “a management transaction transmitted by a network manager over a data communication network and designated for a managed network element connected to the data communication network” and “providing the management transaction to the processor element” and “transmitting a message from the processor element to the managed network element in response to and in accordance with the management transaction.” For the same reasons stated above with reference to claim 1, claim 15 is patentable over Hericourt because Hericourt does not teach or suggest a method for processing a management transaction. Hericourt is concerned only with managing the data traffic between an intranet and the Internet.

#### Claims 16-26

Claims 16-26, dependent upon claim 15, are patentable over the cited reference at least for the same reasons claim 15 is patentable. O’Neil does not cure the deficiency of Hericourt. Claims 16-26 are therefore patentable over Hericourt and O’Neil, alone or in combination.

For the above reasons, claims 1-26 are patentable over the cited references. Withdrawal of the §103(a) rejection of the claims is respectfully requested.

## CONCLUSION

Claims 1-26 are pending in the present application. For the reasons stated above, claims 1-26 are patentable over the cited references. The application is therefore in condition for allowance. If the Examiner would like to discuss any aspect of this application, the Examiner is invited to contact the undersigned at (408) 382-0480.

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